

AUG 24 2005
RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

2005 AUG 24 P 4: 15

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5580

DATE COMPLAINT FILED: October 22, 2004

DATE OF NOTIFICATION: October 29, 2004

DATE ACTIVATED: May 10, 2005

EXPIRATION OF STATUTE OF

LIMITATIONS: October 13, 2009

COMPLAINANT:

Timothy A. McKeever

RESPONDENTS:

Alaska Democratic Party and Marge Kaiser, in her official
capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(22)

2 U.S.C. § 431(23)

2 U.S.C. § 441d(a)

2 U.S.C. § 441d(c)

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 110.11(a)(1)

11 C.F.R. § 110.11(b)(3)

11 C.F.R. § 110.11(c)(1)

11 C.F.R. § 110.11(c)(2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that the Alaska Democratic Party and its treasurer¹ ("the
Committee") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by

¹ The complaint named Joelle Hall, who served as treasurer during the time of the activity at issue.

25044122177

1 failing to include a disclaimer notice on a mailing paid for by the Committee and mailed to
2 registered voters in Alaska concerning the 2004 general election. The Committee does not deny
3 its failure to include the required disclaimer notice on the mailers, but provides what it believes
4 to be mitigating factors: (1) that the disclaimer omission was the sole result of vendor error; (2)
5 that the letter's heading and return envelope make it clear that the letter was being disseminated
6 by the Committee; and (3) that in previous cases the Commission has "generally taken no further
7 action against the committee" where the disclaimer omission was the fault of the vendor, citing
8 MURs 5133R and 4566.

9 The available information indicates that the Committee's mailing lacked the necessary
10 disclaimer notice. For the reasons discussed more fully below, we recommend that the
11 Commission find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her
12 official capacity as treasurer, violated 2 U.S.C. § 441d, admonish the Committee, take no further
13 action, and close the file.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 ***A. Facts***

16 On or about October 13, 2004, the Committee mailed letters to registered Alaska voters
17 setting forth its views that "the [Governor Frank] Murkowski Administration" was the cause of
18 the "delay" in getting absentee ballots to voters. See copy of October 13, 2004 letter attached to
19 Complaint. The letter refers to the "Democratic candidates in this election" as supporting voting
20 rights, and cites Murkowski administration "embarrassments like . . . appointing [the
21 Governor's] daughter [Lisa Murkowski] to the US Senate." The letter does not contain a
22 disclaimer notice stating who paid for the mailing and whether or not the communication was

25044122178

1 authorized by any candidate or candidate's committee as required by 2 U.S.C. § 441d(a)(3). *Id.*

2 The two-page letter includes the Committee's mailing address, telephone numbers, email

3 address, and website information. *Id.*

4 In response to the Complaint, the Committee submitted sworn declarations from Bridget
5 T. Gallagher, then-Executive Director of the Alaska Democratic Party, and Janelle L. Norman,
6 Vice-President of Mail Operations at North Mail, Inc. Ms. Gallagher avers that she prepared the
7 October 13, 2004 letter for dissemination and sent it via email to North Mail, Inc. for processing.

8 Declaration of Bridget T. Gallagher dated December 7, 2004 at ¶ 2. She further states that the
9 letter emailed to North Mail, Inc. contained a disclaimer notice, which was placed in a "footer."

10 *Id.* Ms. Gallagher indicates that the Committee had successfully used North Mail, Inc. several
11 times in the past to conduct mass mailings, and that due to the "high volume of activity that was
12 occurring immediately prior to the general election" she did not request a proof of the letter for
13 review prior to its dissemination. *Id.* at ¶ 3. Last, she avers that she did not learn of the failure to
14 include the disclaimer until she received a copy of the Complaint in this matter from the
15 Commission on or about October 20, 2004. *Id.* at ¶ 4.

16 Ms. Norman confirms that when North Mail, Inc. received the Committee's letter via
17 email, the letter included a disclaimer in the "footer." Declaration of Janelle L. Norman dated
18 December 7, 2004, at ¶¶ 3-5. She further avers that North Mail, Inc. routinely converted such
19 documents into printed letters and mailed them on behalf of the Committee. *Id.* at ¶ 4.

20 According to Ms. Norman, during the production process, North Mail, Inc. inadvertently deleted
21 the "footer" from the letter and the disclaimer did not appear on the mailing. *Id.* at ¶ 5. Last, she
22 avers that North Mail, Inc. did not notice the deletion of the disclaimer until notified by

25044122179

Ms. Gallagher that a Complaint had been filed against the Committee regarding the missing disclaimer. *Id.*

Attached to Ms. Gallagher's declaration is a copy of the October 13, 2004 letter, which the Committee claims was originally sent to North Mail, Inc. for production. That letter contains a disclaimer at the bottom of the first page of the mailing, stating that the communication was paid for by the Committee and was not authorized by any candidate or candidate's committee. The disclaimer is in a box, is of 14-point type set and appears to be black letters against a white background. The letter appears to be a template, requiring only the addressee's information to be customized.

B. Legal Analysis

Because the October 13, 2004 letter mailed to Alaska voters appears to have been a public communication financed by a political committee, a disclaimer notice was required. *See* 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(a)(1). The Commission's regulations define "public communication" as, among other things, a "mass mailing," which means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 11 C.F.R. §§ 100.26 and 100.27. The letters in the Committee's mailing were "substantially similar" in that they appear to have been mailed on or about the same day and contained the same language except for the recipient's name and address. *See* 11 C.F.R. § 100.27. Although there is no available information to establish whether the Committee's mailing included more than 500 pieces, the Committee appears to concede in its Response to the Complaint that the mailing in question required a disclaimer and that it prepared the original version of the mailing with a disclaimer pursuant to the Commission's regulations.

25044122180

1 The disclaimer notice, as set forth in the "footer" of the original template letter sent to
2 North Mail, Inc. for production, contained the appropriate disclaimer language and met the
3 specification requirements for clarity and type size, color contrast, and placement in a printed box
4 apart from the contents of the mailing. *See* 2 U.S.C. §§ 441d(a)(3) and (c)(1), (2) and (3); *see*
5 *also* 11 C.F.R. § 110.11(c)(1) and (2)(i), (ii), (iii) and (iv). However, during the production
6 process the disclaimer was cut-off from the letter by the vendor, and the voters received the
7 communication without the disclaimer. Each letter of the mailing was required to contain a
8 disclaimer. *See* 11 C.F.R. § 110.11(c)(2)(v).

9 To the extent that the Committee argues that it sufficiently complied with Section 441d in
10 that the letter and the return envelope contained the Committee's identifying information, this
11 argument has previously been rejected by the Commission in past matters. *See, e.g.,* MUR 4759
12 (Friends of Phil Maloof).

13 However, in the past the Commission has not pursued matters when the respondent has
14 shown that a vendor inadvertently omitted the proper disclaimer. *See e.g.,* MUR 5513R
15 (Stenberg for Senate)(the Committee's postcard mailing had a disclaimer when it went to the
16 copy center to be duplicated for distribution, however, there was no available information
17 indicating that more than one postcard lacked the disclaimer); *see also* MUR 4566 (Democratic
18 National Committee).

19 In this matter, the facts at hand indicate that the failure to include a disclaimer was an
20 inadvertent omission by the vendor. Moreover, the omission of the disclaimer appears to have
21 been a one-time occurrence. *See* Committee Response, at p. 2 (. . . "[North Mail] had undertaken

25044122181

several similar projects for the ADP without incident. . ."). Under these circumstances, additional investigation or remedies do not appear to be warranted.

Based upon the foregoing, we recommend that the Commission find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. § 441d, send an admonishment letter, take no further action, and close the file.

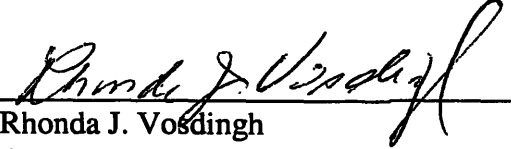
III. RECOMMENDATIONS

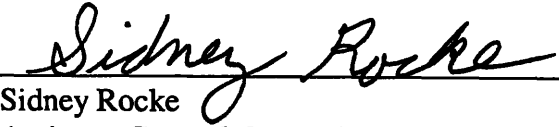
1. Find reason to believe that the Alaska Democratic Party and Marge Kaiser, in her official capacity as treasurer, violated 2 U.S.C. § 441d, send an admonishment letter and take no further action.
2. Close the file.
3. Approve the appropriate letters.

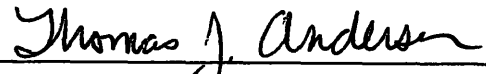
Lawrence H. Norton
General Counsel

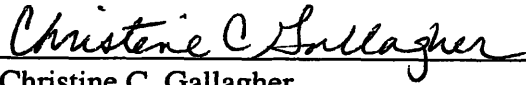
4-24-05
Date

BY:


Rhonda J. Vording
Associate General Counsel for Enforcement


Sidney Rocke
Assistant General Counsel


Thomas J. Andersen
Attorney


Christine C. Gallagher
Attorney

25044122182